

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

WILLIAM BILLY GENE CARTER,)
)
 Petitioner,)
)
 v.) No. 4:05CV855(AGF)
)
ALAN BLAKE,)
)
 Respondent.)

MEMORANDUM AND ORDER

This matter is before the Court upon the application of William Billy Gene Carter for leave to commence this action without payment of the required filing fee [Doc. #1]. See 28 U.S.C. § 1915(a). Also before the Court is petitioner's motion for appointment of counsel [Doc. #4]. Upon consideration of the financial information provided with the application, the Court finds that the applicant is financially unable to pay any portion of the filing fee. Therefore, the Court will grant petitioner leave to proceed in forma pauperis.

The petition

Petitioner, a person currently confined at the Missouri Sexual Offender Treatment Center (MSOTC) located in Farmington, Missouri, seeks a writ of habeas corpus to 28 U.S.C. § 2254. Petitioner contends that his confinement as a sexually violent predator is foreclosed by a state probate court's order finding that petitioner was not guilty by reason of mental disease or

defect and ordering that he be confined at the Fulton State Hospital.

Discussion

A review of this Court's records indicates that petitioner already has one petition for a writ of habeas corpus challenging his confinement at MSOTC pending before the Court. See Carter v. Vincenz, 4:04CV624(FRB) (E.D. Mo.). In that other habeas action, petitioner asserts claims that are essentially the same as those being raised in the instant petition. Consequently, the instant petition should be dismissed as duplicative. See Azia v. Burrows, 976 F.2d 1158 (8th Cir. 1992) (district court may dismiss duplicative complaints prior to service of process).

In accordance with the foregoing,

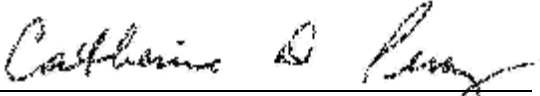
IT IS HEREBY ORDERED that petitioner's application to proceed in forma pauperis [Doc. #1] is **GRANTED**.

IT IS FURTHER ORDERED that no order to show cause shall issue as to the respondent because the instant petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 is duplicative of one already pending before the Court.

IT IS FURTHER ORDERED that petitioner's motion for appointment of counsel [Doc. #4] is **DENIED** as moot.

An appropriate order will accompany this memorandum and order.

Dated this 6th day of July, 2005.


UNITED STATES DISTRICT JUDGE